IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 474 OF 2005

Mahanand Govind Surve & Anr..... Appellants.

Versus

The Union of India..... Respondent.

Mr. G. J. Mohan Rao for the appellants.

Mr. A. M. Samant for the Respondent.

CORAM : ANOOP V. MOHTA, J.

DATED : 22ND NOVEMBER, 2005.

P.C.:

Heard.

2. This is an appeal filed by the appellants for compensation under Section 124A of the Railways Act for the death of their son Rupesh Mahanand Surve. As per their case, the deceased was travelling by a local train on 1st February, 2000 accidentally fell down from the running local train between Ghatkopar and Vikroli Stations and died on the spot.

3. There is no dispute in the written statement about the death. The usual objection was that he was not a

bonafide passenger and therefore no legal right to claim compensation for the death. Issues were framed. One of the Issues was that whether they are the dependants of the deceased Rupesh. The other Issues were answered in favour of the Claimants that the deceased was a bonafide passenger of the train in question. That the accident caused due to the accidental fall of the deceased from the train, as there was an untoward incident as defined under Section 123(c) of the Act. While answering the Issue No.3, the Tribunal has observed as under :

> "It needs to be highlighted that the applicant, Mahanand Govind Surve, has nowhere stated in his affidavit that the deceased was unmarried. He has simply stated in his affidavit that the deceased was a student of 12th Standard. In our opinion, the said evidence of the applicant is insufficient to prove that the deceased was unmarried, as no presumption can be drawn in this regard from the mere was valid upto 5th April, 2000."

4. Above reasoning as produced is no way sufficient

to dismiss the claim as done in the present case. The Tribunal in a given case should have insisted for more particulars about status of the deceased whether married or unmarried. Merely because there was no statement made that the deceased was unmarried and that the deceased was a student of 12th standard, that itself according to me no way sufficient to dismiss the claim which is otherwise sufficiently proved in favour of the claimant.

5. Taking this into account and without observing anything on merits in so far as this part is concerned, I am inclined to remand the matter back to the Tribunal for reconsideration of this Issue and to consider claim application on merits by giving opportunity to both the parties.

6. In view of the above, the impugned judgment dated 12th April, 2004 is quashed and set aside. The matter is remanded back to the Railway Claim Tribunal, Mumbai Bench, Mumbai for considering the matter on merits again. It is expected that this matter be disposed of expeditiously. The present First Appeal is, accordingly, allowed. There shall be no order as to costs.

Sd/-

(ANOOP V. MOHTA, J.)